IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 864 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
RABARI PIRABHAI KALYANBHAI & ORS

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Appearance :
PMR KP RAVAL APP for Appellant
MR MAHENDRA K PATEL for Respondents

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/10/2007

ORAL JUDGMENT :(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 Leave to Appeal granted. Appeal is Admitted. Learned Advocate Mr. Mahendra K Patel for the respondents waives service of admission.

2 Instant Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by learned Additional Sessions Judge, Second Fast Track Court, Patan, on 30th of December, 2004, in Sessions Case No. 226 of 2002, whereby all the four opponents herein being accused of the Sessions Case, came to be acquitted by the Trial Court for the charges levelled against them under Sections 307 and 114 of the Indian Penal Code.

3 Learned APP Mr. K.P. Raval and learned Advocate Mr. M.K. Patel for the respondents requested this Court to hear the Appeal finally as the Record and Proceedings of the Trial Court is available with this Court and that they would assist the Court by supplying extra copies of the evidence recorded during the trial and the documents produced. Request is granted and the Appeal is heard finally.

4 As per the prosecution case, the incident occurred on 1st of

August, 1998 at village Kansa, Taluka & District - Patan. Complainant Bhudarji Meruji Thakor was returning to his residence in village from his field at about 7.00 p.m. All the four accused accosted him near their house. A quarrel ensued because before three years of incident, brother of complainant had filed a criminal complaint against the accused. The accused threatened to kill complainant Bhudarji and accused Pirabhai Kalyanbhai inflicted one dharia blow on middle of the head of the complainant; accused Ishwarbhai Kalyanbhai inflicted a stick blow on the head of the complainant; accused Taljabhai Kalyanbhai inflicted one axe blow on the head of the complainant while accused Kalyanbhai Ratnabhai inflicted one dharia blow on the head of the complainant. In this scuffle, cousin brother of the complainant Nanaji Viraji reached at the spot and, therefore, accused ran away. Injured was shifted to Civil Hospital at Patan. He was treated by Dr. Patni and at about 22.00 hours Dr. Patni informed Patan City Police Station where PW-7 Laxmansinh Mahobbatsinh Chouhan was PSO that Bhudarji Meruji Thakor, resident of Kansa, was admitted to the hospital on account of injuries received in a quarrel. PW-7 Laxmansinh Mahobbatsinh Chouhan deputed hospital Duty Head Constable Chenaji Vihaji to record the First Information Report and complaint offered by the injured Bhudarji and a thumb impression of the injured were subscribed to this complaint. The said complaint was forwarded to Patan City Police Station, which was

registered there at `Zero' number and from there on 2nd of August, 1998, this complaint was forwarded to Vagdod Police Station, where a crime came to be registered against the accused vide Crime Register No. I-68 of 1998 for the above said charges and the investigation was entrusted to PW-8 PSI, Kachraji Solanki. Since the crime was committed in the jurisdiction of Vagdod Police Station, the complaint was forwarded by City Police Station, Patan to Vagdod Police Station. In pursuance of the said investigation, a charge sheet was submitted in the Court of Judicial Magistrate, First Class, Patan, and Judicial Magistrate, First Class, Patan, committed this case to the Court of Sessions and ultimately this Sessions Case was registered as Sessions Case No. 226 of 2006. Sessions Case was made over to learned Additional Sessions Judge, who framed charges against all the four respondents on 3rd of November, 2004, vide Exhibit -11. All the respondents pleaded not guilty and, therefore, they were put to trial. Prosecution thereafter examined 8 witnesses and produced on record documentary evidence. On prosecution evidence being over, further statements of each of the accused were recorded by the Trial Court under Section 313 of the Code of Criminal Procedure. The learned Trial Judge, thereafter, heard prosecution as well as defence and came to the above conclusion of acquittal of the accused and, hence, this appeal by the State.

5 Heard learned APP Mr. K.P. Raval for the appellant – State

and learned Advocate Mr. Mahendra K. Patel for the respondents in detail in respect of this Appeal.

6 We have gone through the Record and Proceedings of the Trial Court thoroughly and we have considered vital features of the matter and reasonable probability arising out of the circumstances of the evidence recorded during the trial. We have re-appreciated the evidence recorded during the trial and have scanned the reasons assigned by the Trial Court for acquitting the accused. We have considered the contentions raised on behalf of the State as well as on behalf of the respondents.

7 Going through the record, it appears that, the complaint offered by complainant Bhudarji is placed on record vide Exhibit–34; pachnama of scene of offence is produced at Exhibit–19; Exhibit – 21 is the certificate of injuries received by the injured as given by the Medical Officer, Civil Hospital, Patan; Exhibit–22 is the Medical Certificate issued by the Medical Officer, Civil Hospital, Ahmedabad in respect of the injured; muddamal was sent to Forensic Science Laboratory and the results are produced at Exhibit–27; vide Exhibit-29 arrest panchnama of the accused is produced; weapons used in the crime are produced by accused vide this panchama.

8 To prove the case, the prosecution examined PW-1 Bhudarji Meruji Thakor, injured at Exhibit–17 and PW-2 Nanaji Viraji Thakor, at Exhibit–18, being eye witness of the incident. However, none of these witnesses supported the prosecution case. Injured Bhudarji stated that a quarrel took place with a mob and he did not know by whom he was beaten and by which weapon. He was declared hostile while PW-2 Nanaji Viraji Thakor stated that he did not witness the incident, only that he saw blood stains at scene of offence. He was also declared hostile. Except these two witnesses, no other witnesses has been examined by the prosecution to prove the incident. PW-3 Ramaji Mevaji Thakor, Exhibit-28 and PW-4 Jayantiji Pradhanji Thakor, examined at Exhibit–31 are panchas of panchnama at Exhibit–29, but none of these witnesses supported the panchnama and stated that they did not know anything except that they signed below ready made writing. PW-5 Ramaji Talaji Thakor, examined at Exhibit–32 is a panch of panchnama at Exhibit–30, by which accused Kalyanbhai Ratanbhai presented a stick before the police. This witness also did not support the prosecution case. PW-6 – Chenaji Vihaji Thakor, Exhibit-33, was the then Police Head Constable, Patan Police Station, and he recorded the complaint of victim at Patan Civil Hospital. PW-7 Laxmansinh Mahobbatsinh Chouhan, examined at Exhibit–36, was the

then PSO, received telephonic message from Civil Hospital, Patan, that injured was admitted to the hospital, he deputed Chenaji Vihaji to record the statements of the injured. PW-8 Kachraji Solanki, examined at Exhibit–37 is the Investigating Officer. No other witness has been examined by the prosecution.

9 On re-appreciating the evidence on record, it clearly transpires that there is no iota of evidence against any of the respondents as to the crime alleged against them. Even the complainant and eye witness did not support the prosecution case and turned hostile. There is no other circumstance appearing from prosecution evidence, which involved any of the respondents in the said crime. The learned Trial Judge, therefore, on this ground acquitted the accused. When we scanned the reasons assigned by the Trial Court, it emerged that, that was the only view of acquitting the accused which could be taken from the prosecution evidence and, therefore, the judgment and order impugned in this Appeal cannot be interfered with. This is an acquittal appeal and unless it is found that the reasons arrived at by the Trial Court for the acquittal are perverse, no interference is warranted in the judgment and order impugned. As discussed above, we do not find even an iota of evidence against any of the respondents from the charges levelled against them

10 In this view of the matter, the following Order :

"Appeal stands dismissed."

(J. R. VORA, J.)

(M. R. SHAH, J.)

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